



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/04219/2014
IA/07826/2014

THE IMMIGRATION ACTS

Heard at Field House
On 9 June 2016

Decision & Reasons Promulgated
On 8 July 2016

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

MR BILAL ARIF
MRS EMILIA BALOGOVA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Wells, Fast Track Immigration Services
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The decision of the First-tier Tribunal was said aside, with no findings preserved, at a hearing which took place at the Upper Tribunal on 17 May 2016. Those decision and reasons are set out in the decision of the President, Mr Justice McCloskey.

2. This is a *de novo* hearing of the appeals, which concern the Immigration (European Economic Area) Regulations 2006, specifically Regulation 6.
3. In advance of the hearing, those representing the appellants served a 213-page bundle on the Upper Tribunal and the respondent. Included in the said bundle, were detailed witness statements from the appellants which addressed their relationship as well as the second appellant's occupation; evidence of their continued cohabitation; evidence of the second appellant's employment and self-employment as well as evidence of the professional qualifications of Mr Rashid Ali, the second appellant's accountant, in respect of whom an unsigned witness statement was also provided.
4. When this matter came before me, there was no need to hear from the appellants as the matter proceeded by way of exceptionally brief submissions from the representatives, who were in full agreement. Essentially, Mr Walker informed me that the respondent accepted that the second appellant is and was both employed and self-employed and that she was, therefore, a worker.
5. Mr Wells indicated that he wished to argue that the second appellant had been discriminated against as a European national, in that he argued that the Secretary of State had imposed a requirement upon her, which would not be imposed on a British citizen. The requirement was said to be one to provide accounts from an accountant regulated and authorised to produce audited accounts. Ultimately, Mr Wells accepted that there was no such requirement in the Regulations and that the suggestion of such a requirement in the reasons for refusal letters was more likely to be down to an "over-zealous" decision maker.
6. Lastly, Mr Wells sought confirmation from the respondent that the relationship between the appellants was not in issue. Mr Walker advised me that the said relationship was not and has never been a matter of concern to the Secretary of State.
7. At the end of the hearing, I reserved my decision, while giving an indication that the appeal would be allowed.
8. According to the reasons for refusal letters dated 10 January 2014, the appellants' applications for, variously, a residence card and registration certificate, were refused solely as it was not accepted that the second appellant was exercising Treaty rights as defined in Regulation 6. At the time of the application, the second appellant stated that she was working as a self-employed cleaner. The Secretary of State made several criticisms of the evidence provided in support of the applications, however there was no allegation of false documents having been provided. The said evidence dated from early to mid-2013.
9. By the time of the hearing before me, the second appellant's employment had altered, on more than one occasion, since the applications were made. While the respondent's concerns as to the documents which accompanied the applications have been addressed, given the passage of time since the applications were made, I have

focused my attention on the evidence of the second appellant's present economic activity.

10. The unchallenged evidence before me is that the second appellant is currently employed as a cleaner by Essex Security Solutions. Supporting evidence, in the form of pay-slips, shows that she generally earns between £800 and £900 per month. The said pay-slips date from February 2015 until May 2016. Prior to that she was working for ISS UK Ltd. The second appellant also continues her self-employed cleaning work which she began in 2013; this consists of domestic cleaning on an ad hoc basis. There was a substantial quantity of documentary evidence before me which supports her claim that she has invoiced clients for cleaning work, has employed an accountant and that she has been filing tax returns regularly since 2013. In view of the absence of any challenge to the documentary evidence before me, it follows that I accept that the second appellant is a qualified person.
11. The appeals are allowed under the 2006 Regulations.

Notice of Decision

The appeals are allowed.

No anonymity direction is made.

Signed

Date: 9 June 2016

Upper Tribunal Judge Kamara

TO THE RESPONDENT **FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of any fee which has been paid or may be payable for the following reason. The evidence before me was uncontested.

Signed

Date: 9 June 2016

Upper Tribunal Judge Kamara